IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9281 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ISHWARBHAI MOHANBHAI RATHOD

Versus

DISTRICT MAGISTRATE

Appearance:

MR PK PANCHOLI for Petitioner

MR UDAY BHATT Ld. AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 10/10/2000

ORAL JUDGEMENT

1. The petitioner - detenu has, by filing this writ petition under Article 226 of the Constitution of India, challenged the legality and validity of the detention order dated 12.12.1999 passede by respondent no. 1 in exercise of powers conferred upon him under sec. 3(2) of

the Gujarat Prevention of Anti Social Activities Act, 1985 (for short ' the Act ").

2. As per the case of the detaining authority, the petitioner-detenu is a 'dangerous person' within the meaning of section 2(c) of the Act and that his activities are are prejudicial to the maintenance of public order. To arrive at a subjective satisfaction, the detaining authority has placed reliance on two IPC cases lodged in Dholka Police Station and both the cases are pending in the court for trial. The detaining authority has also placed reliance on the statements of 4 anonymous witnesses whose identity has not been disclosed by claiming privilege under sec. 9(2) of the Act. As per the papers, such statements were recorded on 28.11.99. The said statements appears to have been verified by the Additional District Magistrate on 6.12.99 and,thereafter, the detaining authority has passed the order of detention on 12.12.99 and that order has been challenged in this writ petition.

3. Though rule has been served upon all the respondents, they have not filed affidavit in replies, in reply to the main petition to controvert the grounds of attack to challenge the detention order.

4. Mr PK Pancholi learned advocate for the petitioner has argued that the detaining authority has placed reliance on the statements of 4 anonymous witnesses. That statements were verified by Additional District Magistrate and not by the respondent no. 1 himself. He has argued that this is a case in which it can be said that the detaining authority has not applied his mind because he has not verified the statements of witnesses, and on that score only, it can be said that the order of detention is bad in law and same is required to be set aside.

5. In view of what is stated hereinabove, this writ petition is allowed. The impugned order of detention dated 12.12.1999 passed by respondent no. 1 with respect to detenu is set aside. The detenu is ordered to be released forthwith, if he is not required in any custody for any criminal case or proceedings. Rule is made absolute. Direct service is permitted.

(H.H. MEHTA, J.)
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